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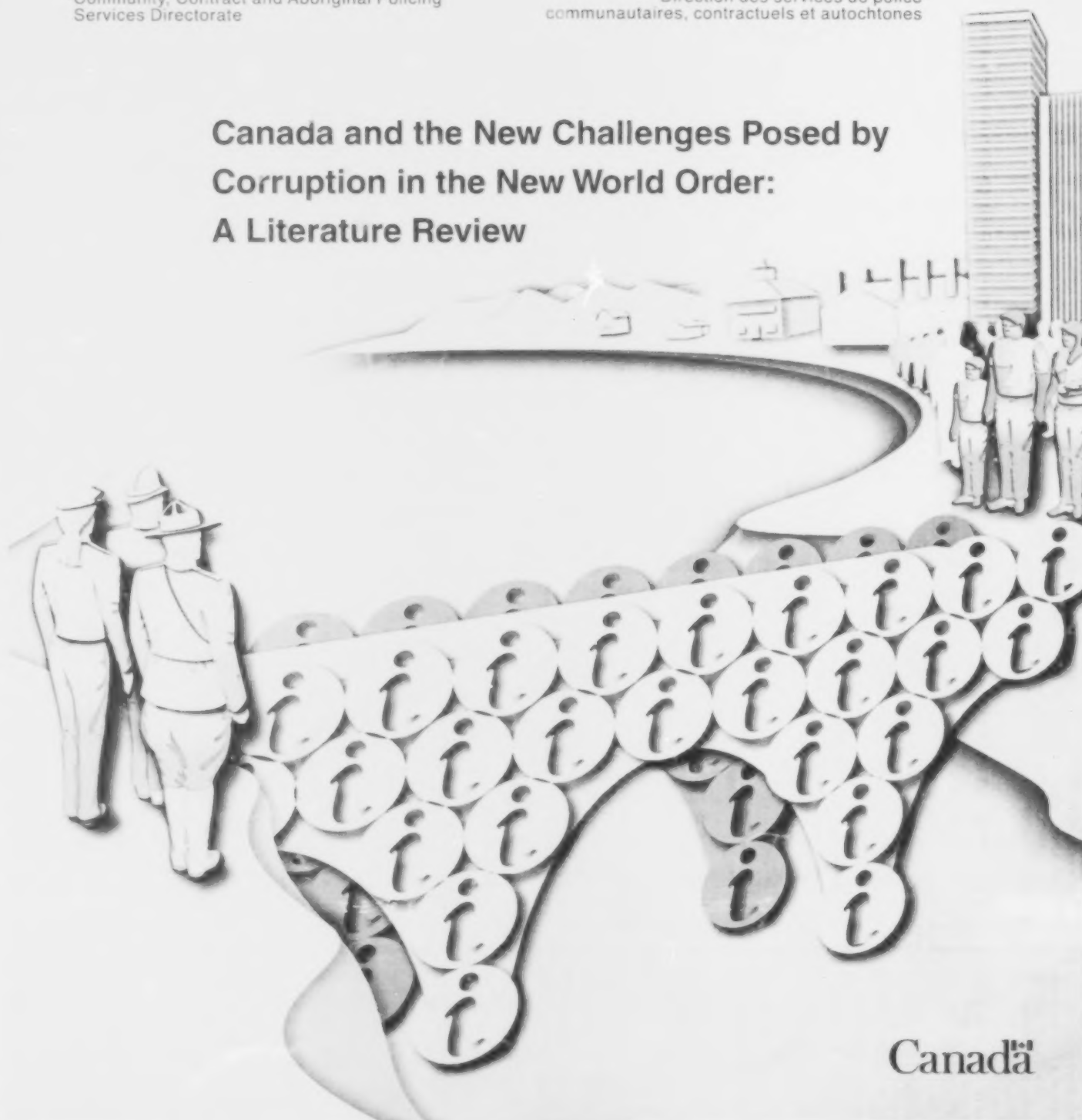
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**Canada and the New Challenges Posed by
Corruption in the New World Order:
A Literature Review**



Canada

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in the New World Order: A Literature Review**

by

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Opinions expressed are those of the author and do not necessarily reflect those of the Royal Canadian Mounted Police or the Government of Canada.

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Executive Summary

Traditionally seen as an individual behaviour or the sum of individual behaviours related to carrying out routine tasks in public affairs (awarding of contracts, awarding of grants, administration of public accounts, decision-making by agencies responsible for exercising executive power, etc.), corruption today more resembles a nebula, the components of which, while hiding the relationships that bind them together, encompass increasingly large areas: that of the complex machinery of the state, of course, but particularly that of corporate activities that, due to current economic reality, must go well beyond national borders. In very simple terms, although the era of "village corruption"—the work of crooked civil servants who could not see the line between their personal business and public affairs—is certainly far from being resolved, it is no less true that, in terms of economic, political, social and even moral impact, such corruption no longer compares to increasing corruption in the very mechanisms of governance.

In Canada, the main issues raised by this problem can be formulated as follows. Are those responsible for formulating criminal policies sufficiently aware of the challenges created by these new issues? Do the legal tools at our disposal to deal with this reality reflect the changes in this area? Furthermore, are they the most effective means of attaining their goals? In the field—i.e., where the action takes place—can we really say that those responsible for implementing these means have the necessary resources and expertise?

The answers to these questions obviously require the creation of a serious, long-range research program. The objective that we set for this study was the completion of the initial study of all initiatives in this area, i.e., analysis of all written documents (books, articles, research reports, institutional reports) over the last 10 to 15 years, in Canada and abroad, in the field of political-administrative corruption. We thus sought to identify the main theoretical orientations adopted, the most recent results regarding the causes and cost of corruption and the possible identification of emerging trends in this area. During this exercise, a number of conclusions and recommendations were formulated. They can be summarized as follows:

- (i) Currently, there is disagreement as to the exact meaning of the term corruption, confusion that is further increased, on the one hand, by its conflicting definitions and, on the other, by it being

downplayed in the news media. The relative stabilization (in the sense acquired over the last few years, as part of the economic and econometric orientation research that now dominates knowledge market research in this field) came about at the expense of the triumph of an idea of corruption in terms of its costs and benefits, which overshadows most of its significant sociopolitical and sociojudicial dimensions.

(ii) If, as a reference point, we examine the concerted efforts of international institutions that have, for at least ten years, been on a veritable crusade, the most disturbing and worrisome corruption is, first and foremost, that which occurs in developing countries. Corruption that exists, and has always existed, in central countries is of no particular interest, with the exception of the attention given it by *Transparency International* in its annual ranking published since 1995 (see Appendix 1 of this report).

(iii) As a result, research into the causes and cost of corruption—directly related to the economic analysis model of today's dominant reality—has no immediate and direct interest in countries like Canada. Such research can nonetheless provide important opportunities for the exchange of ideas on the matter, an exchange that is unfortunately uncommon in this country.

(iv) Contrary to the well-established tendency to see corruption as simply an issue of *criminal* law—that is, a series of actions that can only be identified and understood using logic and the conceptual tools of criminal law—we could and should develop an approach that sees it as a two-edged legal phenomenon. In effect, corruption is no more criminal than it is a part of worlds as different as those that govern administrative law or, even more likely, those that govern the operation of certain parts of government apparatus. "Corruption," it must be said once and for all, is in fact only the name that a normative system (in this case criminal law) gives to certain practices that other normative systems name and treat differently.

(v) The proliferation of international instruments for fighting corruption (Canada has subscribed to the most important of these) does not gauge effectiveness. Everything seems to indicate that their main value is primarily symbolic and, as such, they demonstrate a common, shared willingness (more or less) to recognize the existence of a problem that very distinctly affects the members of the international community.

(vi) One of the most important findings of this study is the political and legal impact of the emergence, over the last 10 to 15 years, of a new world order. The proliferation of international

legal instruments and international and regional bodies in charge of a truly permanent "legal lobbying" operation are signs of a broadening of legal borders throughout the world, the impact of which on national prescriptive orders, particularly that of Canada, are still far from being clearly assessed.

The extreme lack of data regarding the many facets of political-administrative corruption in Canada is undeniable. This shortage increases each year, thus deepening the gulf of knowledge in this area, a gulf that separates and distances us from continually accumulating information of international institutions that regularly demand that we sign on to proposals and action programs that they put forth. To fill this gulf, at least partially, we are proposing the creation of a multidisciplinary corruption research program composed of a number of separate studies; the results will eventually be integrated into a substantial and detailed report on the state of corruption in Canada.

Introduction

The great social, political, economic and cultural upheavals that occurred during the last decades of the 20th century profoundly changed the view of the mission and concrete actions of regulatory bodies regarding activities in the area of managing criminal law. Although we can see that many of these bodies, throughout North America, still resist the call to change and follow outdated intervention logic, we are seeing an emergence of a real will to seriously consider the actual consequences of these changes.

In other words, the "localist" reasoning that traditionally inspired and justified action by the criminal system (and by this I mean the well-established idea that problems requiring local intervention can be defined within clear geographical and jurisdictional boundaries) is increasingly confronted with the undeniable reality that many of these problems greatly surpass those boundaries because, in fact, they do not stop at the border of any one country. What we have come to call "global crime"—an expression that includes an ever-increasing number of very different illegal activities whose only common denominator is undoubtedly very powerful individuals or organizations—demonstrates both the change of direction that is occurring in the factual field of illegal activities and the new challenges that this represents for public security policy.

The whole range of illegal activities (some criminal, some not) that we include in the broad and unclear category of "political-administrative corruption" is a perfect example of this. Traditionally seen as an individual behaviour or the sum of individual behaviours related to carrying out routine public affairs tasks (awarding of contracts, awarding of grants, administration of public accounts, decision-making by agencies responsible for exercising executive power, etc.), corruption today more resembles a nebula, the components of which, while hiding the relationships that bind them together, encompasses increasingly large areas: that of the complex machinery of the state, of course, but particularly corporate activities that, due to current economic reality, must go well beyond national borders. In very simple terms, although the era of "village corruption," the work of crooked civil servants who could not see the line between their personal business and public affairs, is certainly far from being resolved, it is no

less true that, in terms of impact (economic, political, social and even moral), it no longer compares to increasing corruption in the very mechanisms of government.

In Canada, the main issues raised by this problem can be formulated as follows. Are those responsible for formulating criminal policies sufficiently aware of the challenges created by these new issues? Do the legal tools at our disposal to deal with this reality reflect the changes in this area? Furthermore, are they the most effective means of attaining their goals? In the field—i.e., where the action takes place—can we really say that those responsible for implementing these means have the necessary resources and expertise?

The answers to these questions obviously require the creation of a serious, long-range research program. What we want to propose at this time is the completion of the initial stage of any initiative in this area, i.e., an analysis of all written documents (books, articles, research reports, institutional reports) over the last 10 to 15 years, in Canada and abroad, in the field of political-administrative corruption. We thus wish to identify the main theoretical orientations adopted, the most recent results regarding the causes and costs of corruption and the eventual identification of emerging trends in this area. To conclude, we will make recommendations regarding the types of research that should be undertaken over the short and medium terms and proposals for concrete criminal policy measures that could be foreseen in the light of the knowledge that we now have regarding the state of this issue in Canada.

Models of Analysis and Conceptual Difficulties

Until the late 1980s, it was not uncommon for authors of literature surveys in the field of what was then known as "political-administrative corruption" to establish, at the outset, a fundamental distinction between two meanings of the word corruption: the classical meaning and the modern meaning. According to the first, originating in the works of Plato and Aristotle and adopted by a sociol-philosophical tradition from Machiavelli to Max Weber, corruption is, for all intents and purposes, the equivalent of the decomposition of a political regime. Closer to home, we see a perfect example of this definition in *Democracy and Totalitarianism* by Raymond Aron (1965).¹ In the same way, the attempts, by Dobel (1975) to unify the moral, political, economic and social causes of corruption within an integrated theoretical framework, by Shumer (1979), to use

¹ See Padioleau (1975).

Machiavelli as a basis for interpreting American policy and, finally, by Vernon (1981), to reinterpret Proudhon's view of federalism, generally use the classical definition of corruption.² With the exception of philosophical or historical works, this meaning no longer exists in modern language or in texts void of scientific claims.

Attempts at Definition

In the modern sense, or at least that which has reigned in scholarly writing for at least the last forty years, the term corruption has been the subject of intense definitional activity, which no survey of literature could reasonably reflect without running the risk of tedious repetition that, for all intents and purposes, would be of little heuristic value. Whatever the case, as Heywood (1997:6) accurately indicates, the definition of corruption proposed by Heidenheimer (1970) more than thirty years ago still remains valid as a classification tool in this area. The author sets forth three main categories of definitions centred, respectively, on the exercise of public service (*public-office centred*), public interest (*public interest-centred*) and market mechanisms (*market-centred*).

In the first category (public office), some of the definitions proposed by Nye (1967 and 1989, among others) have a paradigm value.³ In the most recent (1989: 966), which takes up the central elements of the first (1967: 416), he proposes the following definition:

Corruption is behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behavior as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses).

Faithful to the great theoretical concerns of the sociological school of thought to which Nye always adhered, this definition—like Sutherland's view of a "*white-collar criminal*" (see Sutherland, 1965)—reduces corruption to a strictly behavioural phenomenon, nothing more than

² See Acosta (1985).

³ The definitions adopted by McMullan (1961), Bayley (1966), Alatas (1968), Huntington (1970) and Gardiner and Lyman (1978) can also be included in this category.

an individual deviation. Undoubtedly the most striking observation here, however, is the fact that this definition is so centred on the behaviour of the corrupt individual (the holder of public office) that it does not even consider the behaviour of the corrupting individual.

The definition proposed by Friedrich⁴ is a good illustration of the second category of definition (public-interest centred) proposed by Heidenheimer.⁵ According to Friedrich:

...corruption can be said to exist whenever a power-holder who is charged with doing certain things, i.e., who is a responsible functionary or office holder, is by monetary or other rewards not legally provided for, *induced to take actions which favour whoever provides the rewards and thereby does damage to the public and its interests.* (Our italics)

If it is true, as noted by Philp (1997: 24), that damage to public interest is more a consequence of corruption than an integral part thereof, the fact remains that Friedrich's definition, compared to that of Nye (and this is clear in the italicized portion), re-establishes the crucial link to the reward for the behaviour of the public office holder and moves attention previously centred on behaviour to the much larger sphere of its consequences.

The differences, however important, between these two views of corruption do not, however, reflect a major divide between the theoretical models adopted by authors in one or the other of these first two categories. Many of them are, to varying degrees, associated with the revisionist thinking⁶ that largely dominated the study of political administrative corruption from the 1960s to the 1980s.⁷ Profoundly influenced by the functionalist model, their work attempted to demonstrate the degree to which large-scale corruption (i.e., accessible to all or almost all, and

⁴ See Heidenheimer (1989:10).

⁵ See also Friedrich (1966 and 1972) and Rogow and Lasswell (1966).

⁶ This term (revisionist) marks the break with the previous school of thought—the moral trend—that dominated American literature for the first four decades of the 20th century. Taking root in the pioneer writings of American journalist Lincoln Steffens (Steffens, 1904), leader of a veritable crusade against the machinery of electoral politics (see Merton, 1957, and Shetter, 1976), this trend sees corruption as an evil that threatens to destroy the very foundations of the American social and economic system. To counter this danger, several remedies, from moral education to punitive measures, were proposed. The transition from one trend to the other can thus be described as a transition to an allegedly objective (scientifically based) analysis of corruption in reaction to a fundamentally ideological approach.

⁷ Key Jr. (1949) is one of the main sources of inspiration for this trend. In this regard, see the varying opinions of McMullan (1961), Wraith and Simkin (1963), Leff (1964), Bayley (1966), Abueva (1966 and 1970), Dwivedi (1967), Nye (1967), Scott (1967 and 1969), Myrdal (1968), Tilman (1968), Gardiner (1970), Huntington (1970), LeVine (1975), Hoetj's (1976), Neher (1978), Seidman (1978), Dale (1979), Marican (1979), Serfontein (1979), Sarassoro (1980), and many others.

built around public management) could, as a result of the poor functioning of political structures, prove to be a powerful tool for integrating social structures. In other words, these works attempted to demonstrate that corruption is of social use in that it contributes to solving three major problems: economic development, national integration and the effectiveness of government. In short, and to use terms of which they are particularly fond, corruption was thus seen as an true "functional dysfunction" (Acosta, 1985). At the heart of the extensive research conducted by this school is the "theory of modernization," which can be described as follows: corruption is a phenomenon that is inseparable from the transition from an archaic society to an industrialized society and, as such, is indispensable to that change. It must be said that, once this process ends, corruption is sure to disappear. One should not be surprised to learn that a large number of developing countries (particularly in Asia and Africa) were the prime experimental areas for innumerable research missions that, over two decades, examined them in depth for large universities and subsidizing organizations in North America.

Supporters of the third category of definitions, market-centred, probably form the most active and fashionable school of research into corruption over the last 10 to 15 years. It is probably possible to state, without much risk of error, that the anti-corruption crusade that began in the 1990s made a major contribution to this school and fed itself. This is not at all difficult to understand when we consider, on the one hand, that we are in fact looking at economic and econometric analysis of corruption and, on the other hand, that international economic regulatory bodies such as the World Bank (WB),⁸ International Monetary Fund (IMF)⁹ and Organisation for Economic Co-operation and Development (OECD)¹⁰ are among the leaders of this crusade.¹¹ However, the foundations of the research model associated with this definition date back to the 1970s and are found in the writings of Banfield (1975, in particular), its main architect. The

⁸ <http://www.worldbank.org/>

⁹ <http://www.imf.org/>

¹⁰ <http://www.oecd.org/>

¹¹ It is also interesting that it is under the influence of organizations such as the World Bank and the International Monetary Fund that developing countries (or transition countries as they are often called) will again, as of the early 1990s, be used as experimental areas for research into corruption. In this regard, see Robinson (1990), Théobald (1990 and 1994), Alam (1991), Morris (1991), Brautigam (1992), Geddes and Neto (1992), Barlow (1993), Caiden (1993), Charlick (1993), Dia (1993), Harsh (1993), Kpundeh (1993, 1994 and 1995), Olowu (1993), Przeworski (1993), Riley (1993), Sives (1993), Aderinwale (1994a and 1994b), Hartlyn (1994), Makumbe (1994), Salas (1994), Hao and Johnston (1995), Lotspeich (1995), Mauro (1995 and 1997), Pope (1995a and 1995b), Barro (1996 and 1997), Coronel (1996), Easterly and Levine (1996), Linz and Stepan (1996), Little and Posada-Carbo (1996), Nadelmann (1996), Bardhan (1997), Ruzindana (1997), among many others. The magazines *Mondes en développement* (26, (102), 1998) and *Tiers Monde* (161, 2000) dedicated two major issues to the question of corruption in developing countries.

works of Rose-Ackerman,¹² in the Anglo-Saxon world, and those Cartier-Bresson,¹³ in French, are now indisputable references on the subject. Following the path laid out by Rose-Ackerman (1978:1-2), who sees corruption as a type of illegal use of market mechanisms in decisions regarding the allocation of public funds, rejected by the democratic political system, several definitions have been proposed. For Leff (1989:389),

Corruption is an extralegal institution used by individuals or groups to gain influence over the actions of the bureaucracy. As such the existence of corruption *per se* indicates only that these groups participate in the decision-making process to a greater extent than would otherwise be the case.

In a slightly more direct style, Van Klaveren (1989:25-26) states that:

...corruption means that a civil servant abuses his authority in order to obtain an extra income from the public (...) Thus we will conceive of corruption in terms of a civil servant who regards his office as a business, the income of which he will (...) seek to maximize. The office then becomes a 'maximizing unit'.

In a concise formula that summarizes both the essence of the various definitions of market-centred corruption and the specific angle of the economic science approach in this area, Cartier-Bresson (1997c: 47) states that:

An agent becomes corrupt when he sacrifices the interest of his principal to his own benefit, and in so doing, breaks the law. According to this definition, then, corruption is merely a particular model of agency relationship.

As explained by Cartier-Bresson (1998b), unlike analyses of the corruption phenomenon that are based on the conceptual and theoretical tools of political science (and such is the case for a large amount of current revisionist research), in which corruption is seen as an institutionalized means of social exchange (Padioleau, 1982, and Médard, 1995), the economic approach looks only at market transactions. According to this model, states Cartier-Bresson (1998b: 26):

¹² See, among others, Rose-Ackerman (1975, 1978, 1994, 1996, 1997 and 1999) and Rose-Ackerman and Stone (1996).

¹³ See Cartier-Bresson (1992, 1995a, 1995b, 1997a, 1997b, 1997c, 1998a, 1998b, 2000a and 2000b) and Cartier-Bresson *et al.* (2000).

[TRANSLATION] ...the cause of corruption stems from the opportunistic behaviour of rational maximizing agents who would integrate themselves into the corruption market. The possibility of the phenomenon thus stems from diverging interests that exist between agents and their mandators and the fact that the asymmetry of information in favour of the agents leaves them a lot of room to manoeuvre behaviourally. It is thus even easier for an agent to use this discretionary authority, as he is in a monopolistic situation that makes him unavoidable, to cash in on favours from third-party agents whose profits and losses depend on him (...) There is thus a corruption market in which public goods are traded illegally, and under worry of sanction, for bribes.

We can thus, in the light of this approach, understand the impunity of these actions. In fact, the low level of sanctions in this area is explained, according to the same author (*idem*):

[TRANSLATION] (...) not only because the asymmetry of information protects the agents and legal proof is rare, but particularly because mobilization of the numerous scattered victims remains difficult in the face of the well-organized agents benefiting from the illegally acquired benefits. The passiveness of victims is thus an additional factor that favours corruption.

The Essential Elements of Corruption

Although some contemporary authors¹⁴ now speak of "old corruption," in an attempt to emphasize new forms of corruption that have emerged as part of the great push for globalization since the 1990s, all indications are that the essential elements of corruption, i.e., the actors and the types of relationships between them, remain substantially the same. Despite the profound restructuring in this area of study over the last few years, it would seem that what is known as political-administrative corruption refers to one reality, the essential elements of which, depending on the circumstances, may be strikingly simple or amazingly complex, with the following three main elements:

(i) A Relationship of Exchange Between the Two Parties

On a factual level (i.e., the concrete situation behind what could eventually be classed as a case of corruption), there is of course—and all authors willingly agree here—only one interaction between *individuals* (relationship of exchange). In fact, it is almost a truism to state that corruption is a way of qualifying or naming, according to criteria that can vary greatly, the

¹⁴ See, among others, Harriss-White and White (1996).

results of an arrangement between actors placed in a particular situation of interaction. In some specific cases, there would be no hesitation in identifying these individuals as *parties* in the exchange and, possibly, parties in the corruption. It must be noted, however, that the differentiation between "party" and "individual" is not necessarily justified in *all* cases, particularly those that prove to be the most intricate. In other words, it is best to attribute to the idea of "party" a meaning that is much broader and more complex and that often goes well beyond the actual actors in the event. In fact, the corruption relationship can take place between individuals acting on their own behalf (and the person being corrupted is simply gaining personal profit from his position within the public administration), but also between organizational structures. In the first case, it is easy to identify both the oldest and most classic corruption of junior civil servants (the "purchase" of common public services at relatively small cost) and the scandal, with all the media coverage, involving crooked politicians. In the second case, which is undoubtedly the one of most concern here, the individual actors (still present, of course) are only cogs in a process that, on both sides, involves the organizational structures within which they operate.¹⁵ The term "systemic" has often been used, mistakenly, in our view, to refer to this second type of corruption relationship in an attempt to emphasize both its ability to penetrate all levels of public affairs management and the cost (a very unclear estimate) that it is believed to create. It is often forgotten, however, that daily "minor corruption," normal in terms of morals, can also become systemic—in this case, a system for managing (or misusing) the bureaucratic red tape that complicates daily life.¹⁶ The systemic character is therefore not, contrary to some popular ideas, a major element differentiating episodic and interpersonal forms, on the one hand, and corruption on the other, any more than the amounts in question (or, more accurately, the financial cost of corruption for society) is a reliable means of differentiating between the two main types that it may take. Furthermore, as we will see later, the question of evaluating the cost of corruption, whatever its form, raises considerable controversy and, according to all indications, produces results that are not very convincing.

(ii) The unavoidable fact that one of the parties holds a public position

¹⁵ It must be noted that it is quite possible to imagine a corruption relationship within a single organizational structure, as long as that structure, of course, is that of the state. The case at hand would be that of a public servant who corrupts another, whether the motives are personal or in relation to the position held. However, the term corruption must not be used to designate actions (illegal or not), similar in nature, that take place entirely outside the public sphere.

¹⁶ Supporters of the theory of modernization, as part of the revisionist school, have dedicated much of their efforts to showing, justifiably, the systemic scope of this type of corruption in the daily life of certain third world nations.

At the risk of completely diminishing the *political*¹⁷ nature of corruption—in the broader sense of the word, i.e., that it always involves someone granted some form of public authority and, as such, makes decisions and takes action in view of the public good—we must resist the shifts in meaning, common over the last few years, by which we use the term corruption to refer to an increasing number of illegal, morally reprehensible or simply questionable actions, without considering the parties involved. The requirement that one of the parties hold public office is, in our minds, the only defence, as weak as it is, against another form of dilution—undoubtedly the worst—that would make a legal definition of corruption extremely fragile, if not impossible. We will examine this question more closely in the section dealing with the analysis of judicial tools. At this time, we must simply remember that any analogous use of the term corruption to include transactions that are morally reprehensible or outright forbidden by limited normative frameworks, aimed at regulating relationships between individuals outside the public sphere (e.g., guidelines regarding the management of the funds of a private company, corporation, union, non-profit organization, etc.) would only further weaken the already weak legal definition of recognized forms of corruption.

(iii) The mutual benefits or advantages stemming from the exchange

This is one of the most contentious problems facing the legal definition of corruption, that of characterizing the benefits or advantages enjoyed by the parties in question. Although it is true, on the one hand, that all agree in identifying as corrupt any type of transaction aimed at exchanging public services for personal profit for the person having control over them (the civil servant, in the broader sense of the term), that unanimity fast disappears when the benefits, whatever they may be, for the public officer do not come personally to him, but rather to a third party with whom he may or may not have a direct relationship. The classic case here is the often opaque practices used in financing political parties and recruiting their members. This is classic because the first school of research on corruption (investigative journalism, in fact) was founded on the acerbic criticism of these practices in the United States.¹⁸ The fact that they today remain the subject of concern, if not of serious questioning, greatly demonstrates the fact that they are obviously part of a grey zone within the broad range of practices that can (not without great

¹⁷ In this way, the term "*political-administrative corruption*" can lead to confusion. Its only use is to draw a line (that is far from precise) between two operational levels of the State apparatus: on the one hand, that of operators (upper *political* level, upper hierarchy of the state), the main mission of which is to produce public policy and the obligation to direct those under them to apply them, and on the other, justly so, the junior operators (*administrative* level, low-level civil servants) assigned to carry out those policies without having much say on their development. Whatever the case, the political nature (in the precise sense within the text) of corruption is present in both cases, although much more visible in the first.

¹⁸ We are, of course, referring here to the moralist school that we described in note 6.

difficulty) be associated with corruption.¹⁹ This is, in fact, a grey area because it is not uncommon for these practices to be part of several political activities for which the legal qualification poses very complex problems. Such is the case, for example, with the age-old practice of political patronage²⁰ and that, more recent, of lobbying.²¹ The particular difficulty here is the fact that, in any one case, we are looking at activities that are, in principle, perfectly legal, but that can, however, along the way and in specific contexts, go completely astray from their legitimate goals. In the case of political patronage, for example, this deviation consists of such things as creating a tool for dealing in political support (or simply for rewarding "political friends") from a prerogative of executive power such as that of handling the awarding of a certain number (limited) of public resources (positions, contracts, grants, various types of assistance, etc.) without being subject to administrative adjudication regulations.

The Causes and Cost of Corruption: An Open-ended Question

Open Season on Corruption

Corruption is definitely in fashion, or, to be more accurate, the will, as expressed in countless discourses of varying origins and natures (political, scientific, legal, journalistic, etc.) to fight it, to control its allegedly destructive power, to possibly curb it. And yet, although it is true that it is certainly not the world's oldest profession, nonetheless all indications are that it ranks close to it. Although the meaning attributed to the term has considerably changed over the centuries, the idea that those upon whom has been conferred the care of the city state could, in the name of shady personal interests, betray profound ideals and values has been a source of concern that dates far back in time. While avoiding the danger of using the term without considering its

¹⁹ The "Keating Five" affair of 1988 is a perfect example of this dilemma. This scandal involved five US senators who had received a total of 1.3 million dollars (US) in campaign donations from Charles Keating, President of the *Lincoln Savings and Loan Association*, itself at the centre of a huge financial scandal that allegedly cost the US Treasury two billion dollars. Typical of the grey zone, the "Keating Five" affair resulted in only five motions of censure against the senators in question. In this regard, see Thompson (1993 and 1995) and Philp (1997). It must be noted in passing that this type of practice (electoral corruption) is not taken into consideration in the surveys on which the *Corruption Perceptions Index* published by *Transparency International* has been based since 1995 (see Appendix 1 of this report).

²⁰ Political patronage is one of the rare themes included in the problem of corruption that has garnered attention from Canadian researchers. It would seem that, unable to deal with the "real business" of corruption, they felt the need to examine euphemistic variations. See, among others, Heintzman (1974), Lemieux (1977), Lemieux and Hudon (1975), Hardy (1979), Hudon (1979) and Simpson (1988). For a completely different view, see Harrison and Stevens (1988), the testimony of a lobbyist involved in the Mackasey affair.

²¹ As with political patronage, lobbying has been the subject of several works in Canada. In particular, see Pross (1975), Boivin (1984), Malvern (1985), Thorburn (1985) and Canadian Study of Parliament Group (1989).

historical frame of reference—the problems of corruption were the subject of heated debates that have survived, often intact, through many eras—to what can we attribute this sudden interest?

The “anti-corruption fashion,” to use the expression coined by Cartier-Bresson (2000a:11), is the result of a mix of various complex factors, three of which, in our opinion, have a particularly decisive role: globalization, the end of the cold war and the structural adjustment policies of the World Bank and the International Monetary Fund. The three are, of course, closely related.

As we know, globalization is not new. Reduced to its simplest and most basic form—i.e. the idea that States have sought, at a time in their history, to ensure their economic development and expand their political, cultural and religious power, etc. beyond their own borders—its first signs can be found well back in history (at least as far back as the 16th century). If anything is new, and there are new aspects, it is the dizzying speed with which globalization has grown over the last two decades as a result of the equally dazzling progress of computer technology. At the economic and financial levels, we will then see an unprecedented increase in cross-border traffic of goods, services and capital, increasingly encouraged by the relaxation of tariffs and the massive deregulation of economic activity and financial markets. Indicators (obviously and justifiably unclear) of the worldwide volume of activity in the latter sector are incredible: approximate total foreign exchange market transactions are estimated at 1.6 trillion dollars (US) *per day*, the equivalent, after only *four days* of activity, of the gross world product (the total volume of goods and services produced worldwide *in one year*), which is currently at 6 trillion dollars. In general terms of economic and financial crime, all things considered, we face here an infinite world of possibilities. We can understand that some of the most active promoters (and beneficiaries) of a borderless economy have sought to protect themselves from the negative effects of a deregulated market by demanding mechanisms to protect their transactions. In other words, one of the counterparts of economic and financial globalization is a series of increasingly complex international standards guaranteeing the security of transactions for multinational companies (Cartier-Bresson, 2000a:11). A major part of these standards seeks, and justly so, to control corruption.

The end of the cold war or, as Cartier-Bresson (*idem*) stated, [translation] “the victory of the western model (allowing) both the reduction of the allocation of aid resources to geostrategic criteria and the affirmation of the universality of the democratic market model” is another decisive factor in the emergence of the anti-corruption crusade. Indeed, the fall of the Berlin

Wall laid the foundation for a new world order in which the supremacy of the United States on the world stage became an unavoidable reality of the last two decades of the 20th century. In the case at hand, we are now witnessing the emergence of a major phenomenon of creation and expansion of transnational legal zones, a phenomenon whose origins date back to at least the early 1980s. At its most basic level, the phenomenon can, in fact, be described as the progressive decline of the traditional prerogatives of territorial sovereignty as regards the creation and application of positive law, in favour of a legal order (rather unclearly defined) that does not recognize national borders. The key words that best describe this reality are probably "standardization" and "conformity," as it is in fact a broad movement of international pressure from those nations that hold a dominant position on the world stage (with, of course, the United States at its head). This pressure has two main goals: firstly, to impose adoption of criminal law in certain areas (drugs, criminal organizations, money laundering, human smuggling, immigration, corruption, etc.) based on a predetermined model act²² and, secondly, through close collaboration by organizations responsible for law enforcement in the various countries (police forces, intelligence agencies, judicial power), the progressive deployment of a transnational control network unburdened in its operation by the principles governing international law. Two factors in particular have, in our opinion, played a decisive role in laying the foundations (far from complete) of this new world legal order: on the one hand, the conviction that developed among the major American control agencies as of the 1980s that the fight against forms of crime (mostly related directly or indirectly to drug use) required that localized fronts be opened outside American territory²³ and, on the other (and probably as a direct result of the first), the international proliferation of a veritable network of non-governmental organizations (e.g., *Transparency International*²⁴), permanent working groups (e.g., *FATF*²⁵), specialized sections of international institutions (e.g., the UN,²⁶ OECD, the Council of Europe,²⁷ etc.) for monitoring and standardizing "crime control" policies in sectors deemed to be strategic.

²² One of the legal standards regarding the fight against corruption is undoubtedly the US *Foreign Corrupt Practices Act* of 1977.

²³ See Nadelmann (1993).

²⁴ This NGO, which has published the much discussed Corruption Perceptions Index since 1995, was founded in 1993 by Peter Eigen, a former World Bank official. See <http://www.transparency.org/>

²⁵ FATF (Financial Action Task Force on Money Laundering - GAFI in French) was created in 1989 by the G7. See <http://www.fatf-gafi.org/>

²⁶ <http://www.un.org/>

²⁷ In 1992, it became the first major international forum to create a mechanism for fighting corruption, the "Multidisciplinary Group on Corruption." For the Council of Europe, see

<http://www.coe.int/portalT.asp> (English) and (French). In 1999, The Council of Europe created the Group of States Against Corruption, GRECO" (<http://www.greco.coe.int/> and <http://www.greco.coe.int/IndexF.htm>) thus adding yet another body to the already impressive list of European mechanisms for fighting corruption.

This brings us to the third factor, the role of the two international major financial and economic regulatory bodies, the World Bank and the International Monetary Fund, in the fight against corruption. Although it is true, on the one hand, that they are an integral part of the international network dealing with corruption, as described above, the fact remains that, in these cases, the fight against corruption seems more of a means, like many others, for carrying out a much more ambitious and consequential political-economic project, the implementation of structural adjustment policies aimed primarily at increasing the productivity of loans granted by the two organizations (Cartier-Brisson, *idem*).²⁸ If we consider the fact that the main recipients of these loans are developing countries and that the main investors in these organizations are the most advantaged countries (the United States again at the head of the list), we quickly understand why the former remain the prime targets of denunciation and corruption research efforts.

The Cause of Corruption

Difficulties in This Area

Discussing the causes of a phenomenon as complex, multifaceted and vague as corruption is not only difficult and unproductive, but rightfully fraught with some disrepute from the outset. The difficulty here stems first from the quasi-impossibility of reaching agreement on what the term itself means. As noted so well by Lascoumes (1999: 35):

[TRANSLATION] The common meaning of "corruption" is ambiguous. It is now used, particularly by many journalists and political actors, as a generic notion that includes all forms of abuse of position, whether public or private. The term takes on a much more extensive meaning when used to designate borderline legal behaviour by those holding political or administrative authority (dissemination of privileged information regarding the creation of positions, planning projects, fiscal arrangements) or within a business (accounting systems, tax evasion). Corruption thus becomes synonymous with deviation, without a clear definition of

²⁸ *In reality, things are a little more complex than the shortcut that we have used would seem to indicate. Between the agenda of structural adjustment policies and the concern over the loan profitability, there is a much more complicated mechanism of which the anti-corruption crusade is only one element among many. This is the promotion, with considerable publicity and generously financed research programs, of the principles of governance as a basis for management of public and private affairs. To the extent that these two organizations make universal adoptions of these principles a main objective of their political mission, it can be said that they constitute a major element of the new world order, of which we are now just seeing the first indications.*

the standard by which the behaviour is evaluated. However, publicists are not alone in thinking analogically. Some analysts, despite the clear definitions that they attempt to provide in introducing their work, get carried away in their persuasive enthusiasm and, in the examples that they later provide, often stray from the definition that they had provided.

Apart from this significant difficulty, we must consider the fact, often emphasized in this report, that the vast majority of research into corruption has dealt with developing countries and was often conducted (and even sponsored) as part of large international programs directed at reforming institutions (political, economic, financial) that were ineffective in their activities in terms of both efficiency and transparency. What purpose does it serve for a country like Canada to study these cases? Canada has been at the top of the Transparency International²⁹ classification since its inception.

Thus, saying that, according to all indications, Canada is a country with a very low level of corruption (based here, of course, on the definition provided by those attempting to measure corruption internationally) does not mean that it is without corruption. This statement, based on the most basic elements of methodological prudence, in reality means nothing. The proof of this is that, each time that an attempt is made to define the reality of this limited corruption that continues at the edges of a society not affected by it, in its fundamental workings, insurmountable difficulties arise (at the empirical level). Apart from the numerous scandals that have, at various times in the country's political life, dominated the news and, on occasion, been subject to commissions of inquiry, the remainder is most often pure speculation. As a result, there can be no justification for the need to analyze the cause of corruption based on the possible usefulness of such an exercise in fighting an evil when, if we are affected by it, we do not know how or to what degree. Its usefulness, if any, must undoubtedly be sought elsewhere.

It may be possible to avoid this difficulty by adopting a strategy similar to that used by the Federal Transnational Crime Working Group (TCWG) in dealing with the question of the impact, in Canada, "of corrupt foreign officials in other countries" (MacLaren, 2000). Unable to find almost any impact of such acts in this country (except as regards administrative corruption in the area of immigration), the report nonetheless indicated the impact that they would probably have caused if they had occurred. A prime example of a pedagogic approach, this type of

²⁹ From 1995 to 2000, Canada was classed fifth five times and sixth once. In 2001 and 2002, the last two years of this index, Canada was in seventh position (see Appendix I).

exercise provides significant fuel to discussion and exchange on the subject and, possibly, promotes the creation of preventive policies that could help to avoid implementation of repressive measures, which often occurs too late. It is in this vein that we will address the question of the cause of a nonetheless serious and persistent problem that, according to all indications, Canada has thus far more or less avoided.

Causal Analysis and Economic Approach

Cartier-Bresson (1998b: 26) identifies two major orientations in all contemporary research into corruption. On the one hand, we see economic studies that hypothesize that the transactions are market-related and, on the other, the work of political scientists who analyze the same phenomenon in terms of institutionalized social exchange. Thus since the former, as we have already indicated, now largely dominates the field of research into corruption,³⁰ we can easily understand that the most common school of thought, the issue of the relationship of causality in this area, is specific to economics, as stated by the same author:

[TRANSLATION] For the majority of economists since the pioneering article by Banfield (1975), the cause of corruption stems from the opportunistic behaviour of rational maximizing agents who would integrate themselves into the corruption market. The possibility of the phenomenon thus stems from diverging interests that exist between agents and their mandators and the fact that the asymmetry of information in favour of the agents leaves them a lot of room to manoeuvre behaviourally. It is thus even easier for an agent to use this discretionary authority, as he is in a monopolistic situation that makes him unavoidable, to cash in on favours from third-party agents whose profits and losses depend on him (...) Unlike fraud, corruption requires an alliance between two actors to the detriment of the victim (mandator). There is thus a corruption market in which public goods are traded illegally, and under worry of sanction, for bribes.

So what is exchanged in this illegal market that, according to this approach, operates by the rules of supply and demand? Or, to ask the question much more directly, as do Gray and Kaufmann (1998: 7), what can "private parties [...] 'purchase' from a politician or bureaucrat"? According to the authors, basically five things (*idem*: 7-8):

³⁰ Saying that economic studies (econometric for the most part) dominate the field of research is to say, at the same time, that the rationale behind them deeply influences the action programs that propose corruption control measures. The efforts of the World Bank and the International Monetary Fund in this field are excellent examples of this.

(i) Government contracts: Here, we think of the classic area of misuse of rules, through bribery, in choosing government suppliers of goods and services.

(ii) Government benefits: It is also possible to purchase the allocation of monetary benefits (tax advantages, subsidies, pensions, etc.) or in-kind benefits (medical care, real estate, ownership stakes in enterprises being privatized).

(iii) Public revenues: Bribes can be used to reduce the amount of taxes or other fees collected by government from private parties.

(iv) Time-savings and regulatory avoidance: Speeding up of delivery of services by the government—and only the government—by paying more than is charged to the public for those services.³¹

(v) Influencing outcomes of the legal and regulatory process: Here, we are in the vast field of mechanisms that serve, through the offer of compensation to the relevant authorities, to limit or completely eliminate government's ability to exercise control (in the broader sense of the word, including both the creation and application of the rules of law).³²

Close examination of this typology tends to demonstrate that it implicitly includes a certain number of factors of varying types that one could claim to have a causal relationship to practices of corruption. They can be divided into two categories: the structural or general factors and the conjunctural factors.

In the first category, the following six factors are the among the most frequently cited in recent work on corruption:

(i) Too much power in the hands of the government: The excessive power available to government officials in exercising their assigned duties can, in some cases, produce considerable distortion in their relationships with civil society. This occurs when that power ceases to be an

³¹ Allegations of corruption in the awarding of immigrant status in Canada, as discussed previously, apparently fall in this category.

³² The works of Bredeur (1979 and 1984) on commissions of inquiry held in Canada, particularly in Quebec, regarding the administration and operations of certain police forces is a prime example of this latter category. As regards the role of commissions of inquiry into the control of corruption (municipal), see Acosta (1987).

instrument for the equitable distribution of government resources and becomes a monopoly that less scrupulous officials can use to their own benefit. In other words, this power then becomes, for all intents and purposes, merchandise available to the highest bidder.

(ii) Limited accountability: The lack of transparency in the activities of government officials adds to the precariousness of reliable control mechanisms and the resulting perception of being safe from sanction are strong incentives to indulge in corruption.

(iii) Weak institutions: Over-centralization of political power in certain sectors of government or in the hands of certain of its officials (as is the case in authoritarian regimes or during relatively authoritarian periods of democratic regimes³³) can weaken the role of some key institutions, which then find themselves dependent on the central power and, as a result, face the permanent need to negotiate the form and even the content of their duties.

(iv) Lack of professional motivation: Poor wage conditions, a lack of performance bonuses and institutional barriers to advancement to upper management are not only strong incentives to corruption, but also motives for justifying it.

(v) Lack of mechanisms for civil society participation: Professional associations and corporations, unions, political parties, the media, citizens' groups, in short, the various means of participating in the social and political life of a community are some examples of defences against corruption. Most denunciations behind the political scandals come from these circles. Furthermore, it is not accident that, in societies with high rates of corruption, it is these organizations that the corrupt try hardest to infiltrate.

(vi) General disillusionment with society: This is a veritable "social syndrome" resulting from the many problems that can affect members of a society: lack of social and political participation, little hope for the future, general feeling of impunity (particularly benefiting the well-to-do), loss of confidence in institutions, etc. Such a state of generalized disillusionment can, in a fairly short time, result in a change to the meaning of values such that honesty, duty and

³³ In the political history of Quebec, the Duplessis period was the subject of many studies dealing particularly with the practice of political patronage, widespread at the time (see note 20, above). The pioneering work of Tardif (1974) on the relationship between police forces and municipal administrations in Quebec illustrates on a much smaller scale the distortions that an analogous situation of dependency (of the police toward the mayor's office in this case) can create.

respect for the law can be seen as outdated virtues that are totally out of tune with a real world that constantly lauds the success of opportunists, wheeler-dealers and go-getters.

There are too many conjunctural factors to provide a comprehensive list. The four that follow, proposed by Mauro (1997a: 4-5), provide a fairly clear idea of how the proponents of the economic approach examine the cause of corruption. In effect, stating that one thing is the cause of another is to simultaneously indicate what needs to be done so that the effect (in this case, corruption) associated with the cause may be changed. It should therefore not be surprising that this short list portrays, almost word for word, the concerns often expressed in the reformative discourse of the anti-corruption crusade.³⁴ These factors are as follows:

(i) Trade restrictions: According to Mauro (*idem*) this type of policy is a prime example of what could be called creation, by the government itself, of sources of "economic rent"³⁵ that, in turn, result in conditions favourable to corruption. He provides the following example:

"protecting a home industry (such as plywood manufacturing) from foreign competition through tariffs creates a semi-monopoly for the local industry. Local manufacturers will lobby for the establishment and maintenance of these tariffs and some may be willing to corrupt influential politicians to keep the monopoly going." (*idem*: 4).

His (inevitable) conclusion: there is less corruption in countries where "trade is relatively free of government restrictions that corrupt officials can abuse" (*idem*: 4).

(ii) Government subsidies: a policy that does not clearly define conditions and possible beneficiaries of government subsidies opens the door to their misuse. Mauro goes as far as to claim that there is a correlation between the availability of subsidies and a country's corruption index.

(iii) Price-control policies: Like trade restrictions, policies to lower the prices of some goods below market value, for political or social reasons, are a source of rents and, as a result, of rent-seeking behaviour. These policies offer ideal conditions for certain individuals to acquire goods

³⁴ Paolo Mauro is an economist with the Developing Country Studies Division of the International Monetary Fund.

³⁵ The term *rent*—of almost mandatory use in economic analyses of corruption—refers to the surplus that holders of certain rare resources are able to earn. I thank my colleague Marc Lavoie, professor in the Department of Economics at the University of Ottawa, for this helpful clarification.

at advantageous prices by bribing the officials who control them.

(iv) *Multiple foreign exchange rate policies*: Some countries, as indicated by Mauro (*idem*), adopt several exchange rates (for investors, tourists, importers, etc.), which can cause a real market in which, by means of corruption, certain individuals may, without being entitled, obtain currency at the most advantageous rate and resell it at a profit.

The analysis of the cause of corruption, for which we have given a brief but representative summary here of what is currently found in the dominant approach to the topic, bears the unmistakable mark of the neo-liberal thought that has deeply affected actions taken at various levels for more than ten years in the fight against transnational crime in general and, in particular, the many variations of what has become known as economic and financial crime. Developed with the express purpose of promoting the reform of political, economic and financial structures in developing countries with which central countries have major discussions at these three levels, these analyses, as we have attempted to demonstrate, have a relative usefulness for countries that are prosperous, democratically healthy and relatively safe from corruption, such as Canada. However, it is quite likely that they would prove useful as part of a reflection to consolidate or improve a situation that it already undoubtedly enjoys.

The Cost of Corruption

Estimating the Cost

- [TRANSLATION] "With respect to providing a quantitative estimate of transnational economic and financial crime or, more generally, all criminal activity at a global level, the figure of \$1 trillion³⁶ first provided by the IMF in the early 1990s is often cited."
- [TRANSLATION] "The IMF estimates the money laundered each year worldwide to be between 2% and 5% of the world's GDP. It estimates global growth for 2000 at 3.5%, which falls directly within the money-laundering range. Conclusion: the growth of

³⁶ Reference here is to US dollars, as with the following quotations.

the world economy in 2000 is attributable to the dirty money it permits to be laundered.”

- [TRANSLATION] “... in a recent article, the newspaper *Le Monde* stated that financial crimes and money laundering would reach \$3 trillion.”
- [TRANSLATION] “The world’s gross criminal product totals far above \$1 trillion per year. This amount breaks down as follows: 300 to 500 billion in drugs, 200 billion in computer piracy, 10 to 15 billion in European Community budget fraud and some 20 billion in animal smuggling, etc.”
- [TRANSLATION] “Crime is still the best way to get rich. It is estimated that it generates 6 trillion francs per year, the equivalent of the GDP of the United Kingdom.”
- [TRANSLATION] “...assets deposited in tax havens total \$5 trillion, more than 3% of the world’s GDP.”

Anyone who has ever, even in passing, shown interest in the general problem of transnational crime has undoubtedly read statements strikingly similar to any one of those above, whether in a scholarly article, a report from a national or international institution, a press release from an NGO, a speech by a political leader or simply in a newspaper. Ours have been drawn somewhat at random from what is probably the most serious and systematic work on the thorny issue of measuring the economic cost of economic and financial crime: the research of Cartier-Bresson, Hors, Josselin and Manacorda (2000). Rest assured, however, that these excerpts were included by the authors, on the one hand, to point out the inflated estimates, the scientific basis of which are never explained, and, on the other, to support the argument that they in fact only serve to create an aura of apparent thoroughness for the policy programs to which the organizations making the claims adhere.

In effect, following an in-depth analysis of the methods used in these attempts (serious this time) to assess the economic cost of the various forms of what they refer to as “transnational economic and financial crime,” the authors conclude that:

[TRANSLATION] ... One can only determine the rarity, poor quality and even incoherence of quantified sources. If this information is

supposed to aid in public-decision making, then further progress must be made in the collection and compilation of data so that it is able to clarify the definition of a rational criminal policy (...) In any case, it seems that the figures, that are supposed to provide a rational and objective dimension to the debate, instead only provide imaginary information that is used in political discourse and/or relayed by journalists. (Cartier-Bresson *et al.*, 2000:142)

Three major reasons are then given to justify this harsh verdict (*idem* 142-143). The first is the inherent difficulty in any attempt to quantify illegal activity, a difficulty that is further compounded by the fact that what we are trying to measure is part of the complex range of transactions that take place at an astounding rate in a globalized financial market. In any case they then say that production of these figures "has not, to date, been a high priority on the political agenda" (*idem*: 142), undoubtedly because it would require considerable investment of public funds. The third and final reason is that it would be impossible to produce valid estimates of the financial cost of these illegal activities without true international co-operation, which is still far from reality.

What Is The Price of Corruption?

For at least three reasons, it would certainly be far too tedious to delineate here the imposing list of all varieties of costs associated with corruption in specialized literature.

Firstly, because most alleged costs are believed to be in countries where corruption is likely widespread. Secondly, because, even relative to those countries, there is no consensus among analysts regarding the costs that could be attributed to corruption. The controversy that surrounds the type of correlation between corruption and economic development is revealing in this regard: for the revisionists of the 1960s and 1970s, this correlation was positive in that corruption allowed economic exchange to take place, an exchange that was hindered by existing official structures; for the trend to economic and econometric analyses, dominant starting in the 1990s, the reverse was true, corruption was unquestionably seen as a major factor in the stagnation of or decrease in growth of collective wealth. Thirdly and finally, indications are that the debate surrounding this question for more than a decade is profoundly directed by the political choices and agendas of the participants. Thus, saying that this or that problem is attributable to corruption can often mean that the problem in question is of such concern to those denouncing it that they will undoubtedly find a way to denounce it, even if corruption were not there.

Keeping in mind all of this, we feel the need to consider the following list of costs or consequences of corruption, as most frequently cited in specialized literature:

- (i) Corruption results in substantial losses in productivity in that the time that should be spent on carrying out government-paid duties is spent on establishing a network of contacts and, in particular, on the operations necessary to cover up the illegal activities.
- (ii) When the search for "economic rents," to use the language of the most popular analysts, proves more lucrative than carrying out productive duties, there is a risk that the most talented and gifted officials will prefer the former over the latter.³⁷
- (iii) Corruption can prove to be a major tool for facilitating tax evasion,³⁸ which in turn has a direct impact on the government's ability to generate revenue.³⁹
- (iv) The practice of corruption in the area of administrative management (i.e., government granting of contracts for the provision of goods or services by private businesses) increases market prices and thus has a direct impact on the public expenditure budget.⁴⁰
- (v) Corruption alters the government's redistribution role "because some taxpayers or consumers of public services will benefit from preferential treatment" (Cartier-Bresson, 1998b).
- (vi) According to Rose-Ackerman (1997), infiltration of corruption into controlling institutions (police, administration of criminal justice, military) by criminal organizations is a step that, once taken, leaves the door open to control over the private sector.⁴¹
- (vii) As must be expected, contemporary specialized literature clearly, or at least inferentially,

³⁷ See Murphy, Schleifer and Vishny (1991 and 1993).

³⁸ See, among others, Chander and Wilde (1992).

³⁹ Chossudovsky (1996) goes as far as to say the various forms of organized crime that go along with increased globalization are responsible for the chronic budget deficits that we see in some countries.

⁴⁰ In a study commissioned by the International Monetary Fund, Tanzi and Davoodi (1997) report that, in Milan, the cost of large construction projects fell by *more than half* following charges and increased surveillance of administrative adjudication measures as a result of a political corruption scandal.

⁴¹ The entry of Eastern countries into the market economy following the fall of the Soviet block gave rise to the mass emergence of a series of well-orchestrated practices of extortion by, among others, former members of controlling organizations in the former Soviet Union, some directly related to senior officials.

claims that corruption has a direct effect on the principles on which a constitutional state is based and, as a result, the legitimacy of public authority and the proper operation of institutions.

The Legal Framework of Corruption

The Legal Polysemy of Corruption

In this section of the report, we propose a brief overview of the various means of legally framing political corruption. It must be brief, as the matter would require its own separate report in order to include all of its complexity. The difficulties here are many and, in the beginning, stem from the idea of a "legal framework" of corruption.

When we state that conduct is subject to some type of legal framework, we assume that (i) the legislator⁴² has *identified*⁴³ a conduct needing to be or possibly being subject to a specific form of control through government mechanisms; and (ii) that the responsibility of identifying and controlling the conduct is assigned to a normative system.⁴⁴ This rather plain statement actually masks unsuspected difficulties. It is plain when we, like traditional jurists, see each normative system in society as a unit unto itself, a specialized and separate tool capable of including its own conducts (that will "belong" to it in some way) that it will manage. This is the precise view of the configuration of the legal order that leads us to say, as we usually do, that "this is illegal," "that falls under civil law," or "this is an administrative infraction," as though each conduct under law had a "fixed legal address," an automatic, exclusive and immutable legal reference. Although it is true that a large number of acts have a predetermined direction (in that they can be identified with and governed by one, and only one, normative system), it is nonetheless true that other acts can be included in more than one normative system at once. Unlike the former, which

⁴² The term "legislator" is understood to mean any person responsible for creating a new legal standard, notwithstanding that person's *sphere* of public service (federal, provincial or municipal, as well as various organizations acting under the authority of a normative framework established by a level of government, e.g., a professional body) or the *scope* of the standard created (general standards, applying to all members of society, and specific standards, regulating the conduct of certain individuals or groups of individuals).

⁴³ Conduct is "identified" when it is named as part of a legal standard. In addition to being identified, in the sense that we give that term, it may also be described, defined, etc., but nothing is less certain. Most conducts found in the Canadian *Criminal Code* are not defined in the text of the Act, but simply named. Their definition (i.e., to what they effectively correspond in the real world) is the result of interpretation of standards by the courts, then solidified in jurisprudence.

⁴⁴ Criminal law, civil law, administrative law and disciplinary law are some examples of normative systems, among many others of lesser size and scope.

we will call typical illegal activities of a normative system, due to their unique legal significance, the latter are legally polysemous, which opens the door to multiple identifications and responsibilities to which they can simultaneously be subject. We call these atypical or *selective*⁴⁵ illegal activities.

Despite the clear (and justified) disinterest in the economic approaches to this important issue and the little attention traditionally given it by legal sociologists and criminologists, indications seem to be that, behind this extremely diverse series of actions referring directly or indirectly to the idea of corruption, there is wide-spread activity to identify and differentially assign illegal activities. The case studies that make up a large quantity of semi-scholarly, semi-journalistic work seems to support this theory. We often see—particularly with large scandals involving senior political actors—implementation of a broad range of highly specialized means of resolving the conflict to ensure, most of the time, a controlled resolution of the matter leading to dead-end classifications (to avoid the term “cover up”) or to the application of symbolic sanctions.⁴⁶ For example, in simple and straightforward terms, the actions behind what we call “conflict of interest” (normative identification) as part of the rules of operation of a specific institution (e.g., a country’s parliament) are not necessarily materially different from those that, in another institutional context and involving other agents, could be called “corruption.”⁴⁷

Normative Instruments

Internationally

Following is a simplified list of the main international normative instruments created as part of

⁴⁵ For a detailed summary of this issue, see Acosta (1988).

⁴⁶ What these specialized methods of resolving conflict ensure, first and foremost, is a little more complex. By referring to an action differently (compared to criminal law, for example), they create a sort of legal automatism that results in all other possible names for the same action being rejected in favour of the supposedly more appropriate proposed regulation. This explains, to some degree and in a whole other line of thought, why it is unlikely that the death of a worker at a work site would be subject to criminal proceedings instead of being resolved through collective government insurance, as is the case: because it actually takes place at the work site, and because that site falls under specific legal standards (that regulate work relations and conditions and workplace safety, etc.), the fatal incident is “automatically” seen (legally) in light of logic specific to the normative field in which it occurred.

⁴⁷ Many of the scandals or affairs involving public morality offences as reported in Gibbons and Rowat (1976), the journalistic writings of Harrison and Stevens (1988) and the numerous cases that illustrate writings regarding the practices of patronage and lobbying can easily be examined in this perspective.

the anti-corruption crusade:⁴⁸

(i) The *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*⁴⁹ adopted by the Organization for Economic Co-operation and Development (OECD) in February 1999. Although not an official OECD document as such, but a control tool negotiated under the auspices of the organization (Martin, no date: 2), it requires that the 35 signatory countries⁵⁰ make it a crime to offer, promise or give a bribe to a foreign public official in order to obtain or retain international business deals.⁵¹ It is no secret that discussion leading up to this agreement within the OECD gained momentum at the instigation of the United States. Having, in 1977, adopted the *Foreign Corrupt Practices Act*,⁵² which criminalizes any corruption of foreign officials, the Americans strongly insisted (particularly to counter European competition) that the major exporting countries place the same limitations on their businesses as those the American legislation placed on theirs (Lascombes, 1999: 8). However, there is no shortage of competitors who claim that American businesses continue to corrupt foreign officials through their subsidiaries—the Foreign Sales Corporations, which benefit from government grants—set up in tax havens (Abramovici, 2000: 22-23).

(ii) The *Civil Law Convention on Corruption*,⁵³ adopted in 1999 by the Council of Europe,⁵⁴ is an instrument that makes civil remedies available to persons who have suffered damage as a result of acts of corruption, even on the part of a government, to defend their rights. The use of recourse provided in civil law against acts targeted by criminal law at least dates back to the famous *Racketeer Influenced and Corrupt Organizations Act (RICO)*⁵⁵ included in the American *Organized Crime Control Act* of 1970. In passing, this strategy has enjoyed some success over

⁴⁸ This list was drawn from the document "The Cost of Corruption," Tenth United Nations Conference on the Prevention of Crime and the Treatment of Offenders <http://www.un.org/events/10thcongress/2088b.htm>

⁴⁹ For the English text of the Convention, see <http://www.oecd.org/pdf/M00007000/M00007323.pdf>. For the text in French, see <http://www.oecd.org/pdf/M00007000/M00007437.pdf>.

⁵⁰ At the current time, only 26 countries, including Canada, have ratified it.

⁵¹ See OECD, <http://www.oecd.org/EN/about/0,,EN-about-88-3-no-no-no-88--no-,00.html>

⁵² The official site for this Act is <http://www.usdoj.gov/criminal/fraud/fcpa.html>. There is excellent commentary on this important legislation at: http://library.lp.findlaw.com/articles/file/00345/000225/title/subject/topic/international%20trade%20law_litigation/filename/internationaltradelaw_1_435 and <http://www.bisnis.doc.gov/bisnis/fcp1.htm>

⁵³ See <http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm> for the text of this Convention in English and <http://conventions.coe.int/Treaty/fr/Treaties/Word/174.doc> for the text in French.

⁵⁴ Canada, as we know, is an observer at the Council of Europe. As such, "it has contributed to defining the twenty guiding principles in the fight against corruption" (MacLaren 2000: 2).

⁵⁵ For the RICO text, see: http://www.ricoact.com/the_act.htm. At Greek (1991 - available at <http://www.fsu.edu/~crimdo/rico.html>), there is an excellent analysis of the criminal and civil means of action set forth in the act.

the last few years as a result of its inclusion, in several countries around the world, in criminal legislation regarding the proceeds of crime.

(iii) The *Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles*⁵⁶ issued by the International Monetary Fund in 1990 reflects that institution. With the goal of increasing transparency in public and private financial activities, it is yet another tool in the worldwide campaign orchestrated by this organization in favour of adopting principles of good governance.

(iv) The *Criminal Law Convention on Corruption*⁵⁷ from the Council of Europe (1998) pursues two major objectives: first, to impose an obligation on European countries to criminalize a vast range of acts of corruption and, second, to promote international co-operation in legal proceedings in this area.

(v) The *Convention on Corruption*⁵⁸ adopted in 1997 by the European Union is more limited in scope and requires that the fifteen European member countries adopt criminal measures against acts of corruption involving officials from the European Communities or officials from the Member States of the European Union.

(vi) The *Code of Conduct for Law Enforcement Officials*⁵⁹ was adopted in 1996 by the United Nations with the twofold objective of encouraging officials with duties related to law enforcement to rid their work environment of corruption and to fight corruption elsewhere in all its forms.

(vii) The 1996 *United Nations Declaration against Corruption and Bribery in International*

⁵⁶ For the text of the Code in English, see www.imf.org/external/np/mae/mft/code/index.htm; for the French text, see <http://www.imf.org/external/np/mae/mft/code/fre/code2f.pdf>

⁵⁷ See <http://conventions.coe.int/Treaty/EN/WhatYouWant.asp?NT=173> (for the English version) and <http://conventions.coe.int/Treaty/FR/WhatYouWant.asp?NT=173> (for the French version).

⁵⁸ Short title of the "Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union." The text of the European Union's Convention on corruption is available at: <http://europa.eu.int/scadplus/leg/en/lvt/l33027.htm> (English version) and <http://europa.eu.int/scadplus/leg/fr/lvt/l33027.htm> (French version).

⁵⁹ See http://www.unhchr.ch/html/men/3/b/h_comp42.htm (English version) and http://www.unhchr.ch/french/html/n.enu/3/b/h_comp42_fr.htm (French version).

*Commercial Transactions*⁶⁰ “urges both the public and private sectors to follow the laws and regulations of nations where they do business and consider the impact of their actions on economic and social development as well as the environment.”

(viii) The *Inter-American Convention against Corruption*⁶¹ adopted in 1996 by the Organization of American States and ratified by 20 countries, including Canada, is a regional instrument that seeks, among other things, to reinforce the democratic nature of institutions and prevent acts of corruption in public administration.

To this list, we can add the fact that the *Transnational Organized Crime Convention*, adopted by the United Nations in 2000 and ratified the same year by Canada, requires that signatory countries apply criminal and civil penalties (confiscation and seizure) to a broad range of transnational crimes, including acts of corruption. Its overly general nature led to the creation of an *ad hoc* group for negotiating a true convention on corruption. The group will hold its sixth meeting next July and August in Vienna.

Apart from these instruments, many others of more limited scope, were added to the international legal arsenal aimed at the “fight against corruption” over the last few years. Modest or ambitious—whatever the case, invariably put forward as responses by the international community to the costs of corruption—these instruments should, in our opinion, be interpreted at two separate levels: at a more general level, as clear signs, among other things, that the ruins of the Berlin Wall are undoubtedly the foundation of a new order that is gradually, but inexorably, establishing itself on the world stage; more specifically, we should, in this, see the fact that those who are now in position to define this order are in agreement that certain corrective measures must be taken or, at the very least, mechanisms created to slow the most harmful effects of the unbridled growth of markets worldwide. In our opinion, it would be naive or, at best, highly premature to see these legal provisions as credible means of perceptibly changing a situation that is continually denounced.⁶² Built on the foundation, as fragile as it may be at this time, of

⁶⁰ See <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N97/768/73/PDF/N9776873.pdf?OpenElement> (English text) and <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N97/768/74/PDF/N9776874.pdf?OpenElement> (French text).

⁶¹ For the English version of the Convention, see <http://www.oas.org/juridico/english/Treaties/b-58.html>; for the French version, see <http://www.oas.org/juridico/fran%20C3%A7ais/b-58.htm>.

⁶² It must be said, in passing, that it is not very likely that those who developed these instruments actually believe them to be effective in the fight they are claiming to lead against corruption. Their complacency while creating these instruments, with the reality that has long reigned in tax havens that shelter colossal sums generated by illegal activities of all kinds, leaves many observers perplexed (see, among others, Lascoumes, 1999).

international law, these instruments usually have only symbolic value (if not only diplomatic) by which a country demonstrates its support, with varying degrees of enthusiasm, for principles put forth as internationally recognized and worthy of being fiercely protected. Their effective value as a means of resolving or reducing the problems that they claim to address is often doubtful. Apart from the OECD's *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, which is actually the basis of national laws in several countries, the rest fall more in the category of discourse of intent. When we think that Europe, which spares no effort in increasing its political and economic power, is probably breaking all records for the production of protocols, common declarations, conventions and treaties, most of which have gone nowhere and are not even ratified, there is good reason to remain sceptical as to the actual ability of these instruments to change the order of things.⁶³

Nationally

Until February 14, 1999, when the *Corruption of Foreign Public Officials Act*⁶⁴ came into effect, criminal offences that fell into the general category of acts of corruption were included in Part IV (*Offences Against the Administration of Law and Justice*) of the *Canadian Criminal Code*. This included the following offences: bribery of judicial officers, bribery of officers, fraud on the government, subscribing to election fund, breach of trust by public officer, municipal corruption, selling or purchasing office and influencing or negotiating appointments or dealing in offices.⁶⁵ With the inclusion of Part XII.2 (*Proceeds of Crime*), four of the offences set forth in Part IV (bribery of judicial officers, bribery of officers, fraud on the government and breach of trust by a public officer) are considered to be "enterprise crime offences" for the purposes of applying section 462.31 (laundering proceeds of crime).

As we have already indicated, the passing of the *Corruption of Foreign Public Officials Act* (S.C. 1998, c. 34) is directly tied to Canada's acceptance of the directives contained in the

⁶³ In this regard, see the report "in half tone" by Paul Helminger, *Convention on the Future of Europe*, June 6, 2002.

<http://www.eu-konvent.dk/upload/application/305047a5/926.pdf>.

⁶⁴ The English version of this act is accessible at:

<http://laws.justice.gc.ca/en/C-45.2/39293.html>; for the French, see <http://lois.justice.gc.ca/fr/C-45.2/29967.html>.

⁶⁵ The offence of "secret commissions," contrary to what may be said even in documents from the Canadian Department of Justice, cannot be considered to be corruption in the classic sense of the term (i.e., where one of the parties involved is a civil servant). It is not by chance that it is not in Part IV, but instead in Part X (*Fraudulent Transactions Relating To Contracts and Trade*) of our *Criminal Code*.

OECD's *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. It thus testifies to the government's will to actively participate in international efforts at fighting corruption. It is thus in this context that this Act adds three new criminal offences to our substantive law: corruption of a foreign public official,⁶⁶ laundering of goods and proceeds of corruption, and possession of those goods or proceeds. Based on an already well-established principle of Canadian criminal law, both individuals and legal entities are criminally responsible. The former are subject to maximum sentences of five years (corruption of a foreign public official) or 10 years (for the other two offences). The amount of fines applicable to legal entities is at the discretion of judges, as the law does not set a limit. It must also be noted that, in section 13, the Act requires that the departments of Foreign Affairs, International Trade and Justice jointly file a report each year on the implementation of the OECD Convention and enforcement of the law, to be submitted to each of the houses of Parliament. The third edition of this report (2002) reports on the first application in Canada of the *Corruption of Foreign Public Officials Act* in the following terms:

By creating a new separate Act to deal with corruption of foreign public officials, the federal government has allowed for federal, as well as provincial enforcement. There are some practical reasons for carrying out prosecutions federally: *the Act is a federal government response to an international initiative and demonstrates Canada's commitment to its trading partners*. It is also likely that prosecutions will be infrequent and require specialized knowledge in this area which could, for practical reasons, be obtained and maintained by Justice Canada.

We are aware of one case under the Act, currently being prosecuted by the Alberta government. Hector Ramirez Garcia, a U.S. immigration officer, who worked at the Calgary International Airport, pleaded guilty, in July 2002, to accepting bribes from Hydro Kleen Group Inc., an Alberta-based company, in exchange for showing favour to the company. Garcia is now awaiting sentencing.

Hydro Kleen, its president Robert Watts and employee Paulette Francis Bakke, have been charged under the *Corruption of Foreign Public Officials Act* with, among other things, two counts of bribing Garcia, and are now awaiting trial in the Alberta Court of Queen's Bench. (Report to Parliament, October 23, 2002, http://www.dfait-maeci.gc.ca/tna-nac/report_parliament-en.asp, our italics).

⁶⁶ Within the meaning of the *Act*, the expression "foreign public official" refers as much to an elected representative of foreign national government as a civil servant or agent of an international public organization.

Means of Action

No study of written texts on political corruption could, at this time, even approximately detail the means of action that have been proposed to eliminate it. Every national and international institution and NGO and most researchers who have regularly examined this issue over the last ten to fifteen years have their own opinions regarding the most appropriate remedies for fighting corruption. On the one hand, a great part of this galvanized effort effort is mainly targets the corruption that prevails in developing countries and, on the other, major political issues often underlie many proposals that, presented as solutions to world problems, actually seek to resolve difficulties faced by certain nations much more than others. These facts certainly do not help in identifying the elements of a program from among this eclectic mix of means of action being put forth. Add to this the fact that the international security crisis (particularly since September 11) increasingly tends to limit corruption to the role of possible condition for carrying out other most-feared activities (with drug trafficking and terrorism at the top of the list) and we get a much clearer idea of the almost insurmountable difficulties involved.

Again using the "pedagogic approach" that we referred to at the end of section 2.2.1 of this report, the main purpose of which is to contribute to debate and reflection in this area, which could prove useful to the Canadian reality, we will limit ourselves here to indicating and briefly commenting on a few of the means of action proposed by the only entity currently involved in the anti-corruption crusade that is successful in remaining—although in a relative manner, we note—somewhat removed from the issues that, in almost all other institutions, often skirt the true sense of this mobilization. The organization in question is *Transparency International*. Following are some of the means of action that they propose, as written by Jeremy Pope in his 2000 *Source Book* (Pope, 2000).

(i) Any action in this area must include a clear commitment by political leaders to combat corruption wherever it may occur.

Canada's relatively privileged situation regarding corruption undoubtedly explains the flagrant lack of public debate on the issue and, without public debate, we cannot expect opinion leaders and elected officials to take a stand. This situation, seemingly reassuring, could eventually have

negative effects, the worst being the development of a certain attitude of naturalization of some shady practices (political patronage, lobbying, political party financing rules, etc.) that quickly acquire the status of normal and even valued practices of managing public affairs or acquisition of power.

(ii) Primary emphasis on prevention of future corruption and on changing systems, rather than indulging in witch-hunts.

The Canadian tradition of setting up public inquiries to supposedly shed light on political scandals has surely contributed to the widespread public idea that, by attacking a few scapegoats, we can clean up public life. Brodeur (1979 and 1984) clearly demonstrated that the main function of these commissions was, in reality, ideological, particularly because the results produced (in the form of various recommendations) were almost always forgotten. Although less fashionable today, the tendency to demand them in dubious situations remains and clearly testifies to the persistence of a political culture (that the media, for obvious reasons, gladly feeds) that is not accustomed to thinking ahead regarding the changes necessary for sound management of public affairs.

(iii) The adoption of comprehensive anti-corruption legislation implemented by agencies of manifest integrity (including investigators, prosecutors and adjudicators).

This requirement can be interpreted in various ways. For example, it can be claimed—as is claimed by most institutions currently involved in the anti-corruption crusade—that “comprehensive legislation” and “implementation of control agencies” necessarily involves an increase in the number and severity of criminal measures. Recent experience in several countries—including our neighbours to the south, who are far from moderates in terms of criminal law—clearly demonstrates to what degree civil measures (confiscation and seizure) can be very useful tools in the fight against what we call financial and economic crime. Furthermore, it would be highly desirable that Canadian corruption legislation be less the result of international pressure and more the result of listening to the actual needs of political reality and business operations in this country. The recent implementation of the *Corruption of Foreign Public Officials Act* in Canada, in the wake of the OECD Convention, is a prime example of a type of legal instrument that we were resigned to admit, before no less than the parliament that adopted it, may serve little purpose. Furthermore, it can be noted in passing that the only study,

to our knowledge, that has attempted to examine, in a very impressive way, Canadian foreign trade practices (MacLaren, 2000) found nothing overly compromising on the part of our business people.

(iv) Identification of those government activities most prone to corruption and changes to the administrative procedures that make it possible.

This is the prime example of the means of action that puts preventive measures ahead of repressive intervention. Many questionable or downright illegal actions can, in effect, be substantially changed or rendered impracticable through changes to administrative procedures. Annual reports from the Auditor General of Canada—one of the most quoted and least read documents in Canada—are an extremely rich collection of reflections on such changes. It is unfortunate that, instead of constructively reading these documents, we systematically, each time they are released, search out the blunders committed by some department or public entity in managing the funds allocated to it.

(v) Creation of a partnership between government and civil society, including the private sector and professional organizations.

We should expect this means to top the list of any intervention strategies regarding illegal activity that, by definition, involves both the public and private sectors. Unfortunately, because this is often forgotten, the sole responsibility for finding solutions is often placed in the hands of one of the parties to the problem. In a related field, such as that of money laundering, it has long been understood that no intervention measure will be successful without the active co-operation of the key players in this area: financial institutions. They are now encouraged to discipline themselves (i.e., to impose their own strict rules of conduct) by making it clear that it is in the best interest of their own reputations to comply.

(vi) Making corruption a “high-risk” and “low-profit” undertaking.

Apparently, this is a course of action that takes place through education and long-term preventive strategies. In effect, training tools must be made available to the general public to change a very dangerous view that corruption is a quick way to get rich, available to the most shrewd, who use this advantage to ensure the highest level of impunity.

Conclusions and Recommendations

The work of reviewing specialized literature on corruption as explained in this report leads to a certain number of conclusions and recommendations that can be stated as follows.

(i) The definitional inflation of corruption, to which is added the negative effects of trivialization of the term (particularly in the media), contributes greatly, as it has in the past, to raising serious obstacles to clearly identifying its related practices. The field of study that, for at least forty years, has attempted to identify them is, at the same time, a victim of this lack of clarity. The emergence, over the last ten years, of the now widespread economic approaches has certainly contributed to a more stable view of corruption, which we can easily see in most texts on the matter. The high cost of this relatively modest progress, however, is the almost hegemonic domination of a view of the social relationships (most often reduced simply to their behavioural dimension) behind corruption, the effect of rationalizing cost and benefits. We must hope that specialists in socio-political and, especially, socio-legal analysis work to bring to light a range of important dimensions of corruption that the economic approaches are clearly unable to identify.

(ii) Despite the substantial differences that we see between the research that constituted a scholarly tradition of research into political-administrative corruption in the 1960s and 1970s and the far more extensive research that, since the 1990s, has dissected in greater detail the many facets of this area of illegal activity, a single observation is clear: the corruption that is harmful, worrisome and, as a result, must be controlled and eventually eliminated is that which takes place in peripheral countries. There is little or no talk of the corruption that exists and has always existed in the large central countries. In all fairness, supporters of the most popular school of research in the 1960s and 1970s (that of modernization) at least attempted to explain this state of affairs: corruption, they claimed without batting an eyelid, was part of the very nature of underdevelopment, an evil that was, to some extent, a necessary part of the delay in the political, economic and social development of the poorest countries. If, on the one hand, we can feel reassured in the knowledge that no serious researcher today would make such a nonsensical claim, on the other hand, we should be just as concerned over the absolute silence with which this debate has apparently ended. Despite the major public scandals that regularly affect the large

central countries, despite the fact that it is undeniably those very countries that turn the wheels of a lawless and borderless financial market, corruption in large industrialized nations seems to raise no particular interest.

(iii) Formulated with the express purpose of correcting the allegedly negative effects of corruption in peripheral countries, analyses that seek to shed light on its effects apparently serve no direct or immediate purpose in a country like Canada. Furthermore, it would be best for authorities (government reports, criminal policy statements, statements by control agencies, etc.) that deal with the corruption issue to maintain a certain critical distance from these analyses and abstain from referring to these causes and, particularly, these costs⁶⁷ as though they were a universal truth on which our intervention methods could be built and justified. However, we see no drawback, quite the contrary, in taking them into consideration and intelligently and critically analyzing them so as to initiate a reflection on the issue that could result in new and creative ideas. In other words, the results of the analyses of the costs and consequences of corruption can be of some use, provided, of course that we take them at face value.

(iv) The important issue of the legal framework of corruption was only dealt with briefly and quickly in this report, for good reason: it is worthy of its own separate analysis, which has yet to be done. Its piecemeal nature, however, did not stop us from examining, at least in its basics, the amazing complexity of the problem of its legal characterization. In effect, we have attempted to show that we should and must place the well-established idea of seeing corruption as only a reality of *criminal law*—i.e., a series of actions that can only be identified and understood as part of the logic and conceptual tools of criminal law—in opposition to an approach that sees it as a polysemous legal phenomenon. As demonstrated by countless political scandals in various countries, corruption is no more a criminal matter than a part of universal law that is as different as those that make up the rules of administrative law or, even more likely, those that govern the operation of certain sectors of government. "Corruption," once and for all, is in fact only the name that a normative system (in this case criminal law) gives to certain practices that other normative systems call by other names and deal with differently. By only seeing in it actions that a normative system as restrictive as criminal law can reflect, we are condemned at the outset to leaving many other aspects of the same phenomenon in the shadows, aspects that are common in

⁶⁷ The question is furthermore particularly serious as regards anything that is closely or remotely related to estimating the financial cost of corruption. As we have shown in this report, discourse regarding "corruption figures" is, all things considered, only discourse based on specific political agendas with no recognizable scientific basis.

areas governed by other, much more sophisticated regulatory systems. The report to the Canadian Parliament by departmental authorities in charge of enforcing the OECD Convention and the *Corruption of Foreign Public Officials Act*, which we quoted in section 3.2.2 of this text, is an excellent example of this: three years after the implementation of an act that, according to the report, "demonstrates Canada's commitment to its trading partners," the only result is the prosecution of the employer and an employee of an Alberta company who bribed a Hispanic-American immigration officer at the Calgary Airport.

(v) Again in terms of legal framework, we see that the proliferation of international instruments for fighting corruption (the most important of which Canada has subscribed to) is not a measurement of success. Indications are that their main value is primarily symbolic and, as such, they demonstrate a common, shared willingness (more or less) to recognize the existence of a problem that affects, very distinctly, the members of the international community. Beyond this function, classic in the development of international law, we are still at the stage of hypothetical reasoning based on strict evaluations. Currently, for example, it is possible to advance the idea that the increasingly common promotion of civil recourse through these instruments could eventually open the door to the preferred criminal treatment of corruption. The use of confiscation and seizure of goods in areas related to corruption (e.g., corporate crime) has proven to be a control tool capable of getting around obstacles that have traditionally hindered criminal law.

(vi) The progressive emergence over the last 10 to 15 years of a new world order is, in our opinion, one of the most notable findings. Although it testifies, by its very essence, to a fundamental and maybe irreversible redefining of the political power relationship between all countries, particularly central and peripheral countries, this new order also causes considerable upheaval in other areas for national governments. For our purposes, we will retain those that affect political and judicial systems and, more particularly, those that have profoundly affected the meaning of the concept of sovereignty over the last few years. For, in effect, it is not only economic and cultural borders that have been progressively eliminated over that time in the wake of economic globalization and the informatics revolution, but also political borders (with the considerable increase in the power of supranational organizations) and, increasingly, legal borders (with the proliferation of international legal instruments, international courts and international and regional organizations responsible for a truly permanent "legal lobbying"

operation⁶⁸). There are considerable advantages to be drawn from this new reality, just as there are serious drawbacks that could eventually be attributed to it.

Among the expected benefits, we intuitively think of the immense possibilities that increased convergence of national legal distinctives could have on international co-operation in the administration of justice and management of public security. In effect, nothing is more beneficial to the creation and proper operation of transnational networks of corruption or money laundering, or any type of economic or financial crime, than jurisdictional conflicts between the countries in which those networks operate. The idea of greater international integration of efforts at countering the negative effects of excessive legal protectionism is not, in and of itself, a bad thing and, insofar as some elements of the new world order are here to stay, they are undoubtedly unavoidable. Nonetheless, there must be no illusions, over the short term at least, regarding the effective implementation of international co-operation in these areas. Europe, which admirably succeeded in incorporating the economies and political bodies of its member countries into community structures, still encounters many obstacles to the integration of its regulatory authorities and to having a common language for its judicial systems. Even the more limited scale of a single national territory is never easy: the struggle of municipal police forces in the United States and even the American icons of control, the FBI, DEA and the powerful CIA, in the race for drug seizures (the proceeds of which go to the police force that made the seizure) is a good example of the difficulties encountered on the road to judicial and police co-operation.

At the top of the list of drawbacks is undoubtedly the risk (that we cannot clearly evaluate at this time) of any national legal system that opens itself freely to imported normative frameworks designed to respond to problems that are partly or totally foreign to that system. It is increasingly difficult to reach a balance between a country's obligation to honour its international commitments and its duty to preserve the identity of its own institutions and the champions of the crusades (anti-corruption, drugs, terrorism, etc.) show no sign of the slightest concern for that

⁶⁸ It is without malice or irony that we propose this term that, in our opinion, appropriately describes the actions of a large number of relatively recent organizations (the FATF and the various regional institutions surrounding it are a perfect example), the purpose of which is basically to pressure members of the international community to undertake legislative reform based on a pre-determined model and to constantly monitor (particularly by means of the periodic publication of "black lists") to force naysayers to fall in line. Furthermore, it would be wrong to fail to recognize—like, unfortunately, few writers have done to date (see Beare and Martens, 1998)—that the term "political lobbying" also describes the type of relationship that the United States regularly maintains with Canada in terms of criminal legislation and public security policy. The events of September 11 only added new momentum to the standardization efforts of our neighbours to the south, as is witnessed by the ongoing pressure we face regarding border security and immigration policy. Even in matters totally unrelated to national security, such as the recent proposal to decriminalize possession of marijuana, American dissatisfaction was soon made apparent.

balance. As such, the role of organizations like the World Bank, the International Monetary Fund, the OECD, OAS and a multitude of international commissions and working groups that, under the pretext of leading a common fight against an evil that affects everyone equally, are more often the means of transmitting the control needs of certain countries or regions in particular, should be closely examined each time that a joint declaration, treaty or convention that they have proposed is signed.

* * *

However, if there is one conclusion that overrides all others in this report, it is the unnerving conclusion that there is an extreme lack of data on the many aspects of political-administrative corruption in *Canada*. This lack increases from year to year, thus widening the gulf of knowledge in this field that separates us from the information that continues to build *as part of the international institutions that regularly demand our participation in the proposals or action programs that they put forth*. And yet, no-one would attempt today to knowingly and responsibly propose criminal policy, in any area of intervention, without having a wealth of reasonable knowledge regarding the reality in question. This is why we are proposing the creation of a multidisciplinary research program responsible for conducting a certain number of separate studies, the results of which would eventually be included in a substantial and detailed report on the state of corruption in Canada. For example, at this time we suggest research into the following themes:

- (i) The development of a broader and more detailed definition of corruption that reflects the various practices of exchanging favours, advantages or benefits involving public officials (national and international) that occur in Canadian society.
- (ii) A detailed inventory and analysis of the various practices (including lobbying and political favouritism) that can be included in a broadened definition of corruption that reflects its *legal polysemy*, i.e., the fact that these practices can be identified and treated differently based on the normative framework under which they fall.
- (iii) A detailed inventory of current practices in the financial market involving Canadian actors (individuals or businesses) in view of identifying possible connections to public officials.

(iv) An analysis—obviously limited but supported by the most reliable methods currently available—of the costs for Canada of the corruption practices identified in the research described in point (i) above.

(v) A detailed inventory of all international legal instruments currently available in the fight against corruption—with particular emphasis on those that Canada has ratified or committed to ratify—so as to identify, among other things, our obligations and, particularly, their appropriateness to what is currently seen as being our criminal policy priorities in this area.

(vi) An in-depth study of the current state of legal and police co-operation between Canada and the international community in general, and the United States in particular, with specific emphasis on the cost for Canada and the benefits for us in terms of reciprocity.

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Appendices

Appendix I

Transparency International

Corruption Perceptions Index (CPI) - 1995-2002

Bribe Payers Index (BPI) - 1999 and 2002

1995 Corruption Perceptions Index (CPI)		
Rank	Country	CPI
1	New Zealand	9.55
2	Denmark	9.32
3	Singapore	9.26
4	Finland	9.12
5	Canada	8.87
5	Sweden	8.87
7	Australia	8.8
8	Switzerland	8.76
9	Holland	8.69
10	Norway	8.61
15	United States	7.79

1996 Corruption Perceptions Index (CPI)		
Rank	Country	CPI
1	New Zealand	9.43

1996 Corruption Perceptions Index (CPI)		
Rank	Country	CPI
2	Denmark	9.33
3	Sweden	9.08
4	Finland	9.05
5	Canada	8.96
6	Norway	8.87
7	Singapore	8.8
8	Switzerland	8.76
9	Holland	8.71
10	Australia	8.6
15	United States	7.66

1997 Corruption Perceptions Index (CPI)		
Rank	Country	CPI
1	Denmark	9.94
2	Finland	9.48
3	Sweden	9.35
4	New Zealand	9.23
5	Canada	9.1
6	Holland	9.03
7	Norway	8.92
8	Australia	8.86
9	Singapore	8.66
10	Luxemburg	8.61
16	United States	7.61

1998 Corruption Perceptions Index (CPI)		
Rank	Country	CPI
1	Denmark	10
2	Finland	9.6
3	Sweden	9.5
4	New Zealand	9.4
5	Iceland	9.3
6	Canada	9.2
7	Singapore	9.1
8	Holland	9
8	Norway	9
10	Switzerland	8.9
17	United States	7.5

1999 Corruption Perceptions Index (CPI)		
Rank	Country	CPI
1	Denmark	10
2	Finland	9.8
3	New Zealand	9.4
3	Sweden	9.4
5	Canada	9.2
5	Iceland	9.2
7	Singapore	9.1
8	Holland	9
9	Norway	8.9
9	Switzerland	8.9
18	United States	7.5

2000 Corruption Perceptions Index (CPI)		
Rank	Country	CPI
1	Finland	10
2	Denmark	9.8
3	New Zealand	9.4
3	Sweden	9.4
5	Canada	9.2
6	Iceland	9.1
6	Norway	9.1
6	Singapore	9.1
9	Holland	8.9
10	United Kingdom	8.7
14	United States	7.8

2001 Corruption Perceptions Index (CPI)		
Rank	Country	CPI
1	Finland	9.9
2	Denmark	9.5
3	New Zealand	9.4
4	Iceland	9.2
4	Singapore	9.2
6	Sweden	9
7	Canada	8.9
8	Holland	8.8
9	Luxemburg	8.7
10	Norway	8.6
16	United States	7.6

2002 Corruption Perceptions Index (CPI)		
Rank	Country	CPI
1	Finland	9.7
2	Denmark	9.5
2	New Zealand	9.5
4	Iceland	9.4
5	Singapore	9.3
5	Sweden	9.3
7	Canada	9
7	Luxemburg	9
7	Holland	9
10	United Kingdom	8.7
16	United States	7.7

1999 Bribe Players Index (BPI)		
Rank	Country	CPI
1	Sweden	8.3
2	Australia	8.1
2	Canada	8.1
4	Austria	7.8
5	Switzerland	7.7
6	Holland	7.4
7	United Kingdom	7.2
8	Belgium	6.8
9	Germany	6.2
9	United States	6.2

2002 Bribe Players Index (BPI)		
Rank	Country	CPI
1	Australia	8.5
2	Sweden	8.4
2	Switzerland	8.4
4	Austria	8.2
5	Canada	8.1
6	Holland	7.8
6	Belgium	7.8
8	United Kingdom	6.9
9	Singapore	6.3
9	Germany	6.3

Other Reports Available

<u>Date</u>	<u>Title</u>	<u>Author</u>
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May 2003	Media Coverage of Organized Crime - Police Managers Survey	Judith Dubois
March 2003	Criminal Networks	Vincent Lemieux, Ph.D.
March 2003	The Direct and Indirect Impacts of Organized Crime on Youth, as Offenders and Victims	Holly Richter-White, M.A.
November 2003	Intimidation of Police Employees	Don Loree, PhD., Susan Kerr, B.A., and Elizabeth Loree
July 24, 2002	Violent Incident Reports: An Analysis 1997-2001 Inclusive	Susan Kerr, B.A.
June 2002	On Organized crime and police cooperation in the European Union- lessons learned. Interview with Professor Cyrille Fijnaut.	Marcel-Eugène LeBeuf, Ph.D.
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August 1998	Restorative Justice And Policing In Canada Bringing The Community Into Focus	Margaret Shaw & Frederick Jané